

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

TERRENCE D. MOORE,

Petitioner,

vs.

STATE OF NEBRASKA
DEPARTMENT OF CORRECTIONS,

Respondent.

8:20CV423

MEMORANDUM AND ORDER

This matter is before the court on motions filed by Petitioner and Respondent.

First, Petitioner filed a Motion for Appointment of Counsel on January 27, 2021. (Filing 5.) “[T]here is neither a constitutional nor statutory right to counsel in habeas proceedings; instead, [appointment] is committed to the discretion of the trial court.” *McCall v. Benson*, 114 F.3d 754, 756 (8th Cir. 1997). As a general rule, counsel will not be appointed unless the case is unusually complex or the petitioner’s ability to investigate and articulate the claims is unusually impaired or an evidentiary hearing is required. *See, e.g., Morris v. Dormire*, 217 F.3d 556, 558-59 (8th Cir. 2000), *cert. denied*, 531 U.S. 984 (2000); *Hoggard v. Purkett*, 29 F.3d 469, 471 (8th Cir. 1994). *See also* Rule 8(c) of the *Rules Governing Section 2254 Cases in the United States District Courts* (requiring appointment of counsel if an evidentiary hearing is warranted). The court has carefully reviewed the record and finds there is no need for the appointment of counsel at this time.

Second, Respondent filed a Motion to Substitute Respondent (filing 7) to replace Respondent State of Nebraska Department of Corrections with the proper respondent, Scott R. Frakes, the Director of the Nebraska Department of

Correctional Services. Upon careful consideration, Respondent's motion is granted.

IT IS THEREFORE ORDERED that:

1. Petitioner's Motion for Appointment of Counsel (filing 5) is denied without prejudice to reassertion.

2. Respondent's Motion to Substitute Respondent (filing 7) is granted. The clerk's office is directed to update the court's records to reflect that Scott R. Frakes is the sole proper respondent in this action.

Dated this 2nd day of February, 2021.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge